IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 237 OF 2005

Madhukar Baburao Mohite. ... Appellant.

Versus.

Parshuram Raghunath Karanjkar & ors. ... Respondents.

Shri N.V.Walawalkar for the Appellant.

Shri G.S.Godbole for the Respondents.

CORAM : ABHAY S. OKA, J.

DATED : 21st March, 2005.

P.C.:

1. Admit. Shri Godbole waives service for the Respondent No.1. Shri Walawalkar, the learned Counsel appearing for the Appellant states that Shri V.N.Chavan, the learned Advocate appearing for the Respondents Nos.2 to 23 who has filed vakalatnama for the Respondents in the trial Court is present and within one week from today, he will file note of appearance for the said Respondents. Considering the facts and circumstances of the case service on the Respondent No.24 is dispensed with.

2. After arguing the appeal for some time the learned Counsel appearing for the Respondent No.1 has filed an affidavit of the Respondent No.1 which is taken on record and marked "X" for identification. The said affidavit reads thus:

1) I say that I hereby voluntarily offer not to work as treasurer of the Shivaji

Shikshan Prasarak Mandal Barshi and though I will attend the meeting of the Managing Committee, I will not participate in the deliberations in the meeting nor vote on any subject in the meeting of the Managing Committee, till the hearing and final disposal of Regular Civil Suit No.1 of 2004 filed by me in the District Court at Solapur.

2) I say that though it is my contention that a breach of the orders of the trial Court is committed, I voluntarily offer to withdraw the application filed by me under Order 39 Rule 2-A of C.P.C."

3. After going through the said affidavit, the learned Counsel appearing for the Appellant submitted that the order of the trial Court be modified in terms of the statements contained in the said affidavit and the suit may be directed to be heard expeditiously. The learned Counsel for the parties state that the evidence of both the parties may not be very lengthy considering the controversy involved in the suit. In view of the affidavit of the Respondent No.1 filed on record, the Counsel appearing for the parties agree that the reasons need not be assigned for modifying the impugned order passed by the trial Court.

4. Hence the following order is passed:

(i) In view of the affidavit of the Respondent No.1 which is taken on record today, the impugned Judgment and Order dated 28th January 2005 is quashed and set aside.

(ii) Till disposal of the suit pending in the District Court, the Respondent No.1 will be permitted to remain present in the meeting of the Managing Committee of the Respondent No.23. However, the Respondent No.1 shall not participate in the discussions/deliberations in the meeting and shall not be entitled to vote on any subject in the meeting of the Managing Committee. Till the disposal of the suit the Respondent N.1 shall not act as Treasurer of the Respondent No.23.

(iii) The statement of the Respondent No.1 that he will withdraw the Application filed by him under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 is accepted.

(iv) Till disposal of the suit the Resolution

No.29 dated 28th June 2004 will not be implemented. It will be open for the Respondents Nos.1 to 23 to appoint any member as a Treasurer whose appointment will be entirely subject to the final result of the pending suit.

(v) It is made clear that the aforesaid arrangement will be without prejudice to the rights and contentions of both the parties in the pending suit.

(vi) The learned trial Judge will decide the suit finally as expeditiously as possible and in any event on or before 30th September 2005. Both parties will cooperate with the learned trial Judge for early disposal of the suit.

(vii) All contentions of the parties are kept open.

(vi) Parties and the concerned Court to act on an authenticated copy of the order.

Judge.